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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 131 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VINITABEN ARVINDBHAI

Versus

COMMISSIONER OF INCOME TAX

Appearance:

1. INCOME TAX REFERENCE No. 131 of 1988

MR MJ SHAH for Petitioner No. 1

MR BB NAIK WITH MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 04/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

The Income-tax Appellate Tribunal, Ahmedabad Bench "C" has referred under Section 256(1) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") the following question for the opinion of this Court :-

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that deduction u/s. 80T of the Income-tax Act should be allowed only after setting off the capital loss suffered on the sale of other assets, and not with reference to the gross amount of capital gain earned by the appellant ?"

2. Heard Mr Manish J Shah for the applicant-assessee and Mr BB Naik for the revenue. In the case of H.H. Sir Rama Varma vs. CIT, 205 ITR 433 (SC), it has been stated that the relief under Section 80T of the Act can be allowed only after setting off of capital loss suffered in relation to sale of other assets. Following the said decision, we hold that the Tribunal was right in law in granting deduction under Section 80T of the Act after setting off the capital loss suffered on sale of other assets and not with reference to the gross amount of capital gain earned by the assessee. The question is thus answered in the affirmative i.e. in favour of the revenue and against the assessee.

The reference is disposed of accordingly with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-